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FEDERAL COMMUNICATIONS COMMISSION

DA 96-1275

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 95-87
Table of Allotments,) RM-8644
FM Broadcast Stations.)
(Hatfield, Arkansas))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 9, 1996

Released: August 16, 1996

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making (Notice)*, 10 FCC Rcd 7164 (1995), issued in response to a petition filed by John Harle ("petitioner") proposing the allotment of FM Channel 281C2 to Hatfield, Arkansas, as that community's first local aural transmission service. Petitioner filed supporting comments in response to the *Notice*.¹ Opposing comments were filed by Max H. Pearson ("Pearson"),² to which the petitioner responded. No other comments were received.

2. Pearson disputes Hatfield's status as a cognizable community for allotment purposes,³ and alleges that as the petitioner did not present initial evidence to support such a determination, the proposal must be denied.⁴ Further, while recognizing that the Commission in recent years has not considered economic competition in considering proposed amendments to the FM Table of Allotments, Pearson nevertheless urges that the allotment of a C2 facility to Hatfield would be an inequitable use of the scarce radio spectrum and inconsistent with Section 307(b) of the Communications Act of 1934, as amended, since Hatfield's small

¹As stated in the *Notice*, petitioner's request, although signed, did not include an affidavit verifying statements contained in the petition, as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in responsive comments, and has complied accordingly.

²Pearson is the licensee of Station KTTG(FM), Mena, Arkansas.

³Pearson cites to *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 51 RR 2d 807 (1982); and *Gretna, Florida, et.al.*, 68 RR 2d 1358 (1991).

⁴Citing *Ellision Bay, Wisconsin*, 9 FCC Rcd 2327 (1994), *recons. denied* 10 FCC Rcd 8082 (1995), in which the Commission denied an allotment based upon the petitioner's failure to present sufficient community information in response to the *Notice*.

populace is presently well served by area broadcast outlets located in nearby Mena, Arkansas.⁵ Moreover, Pearson alleges that the instant proposal represents an attempt to provide a third FM service to the larger community of Mena, as evidenced by the petitioner's chosen reference site located in close proximity to Mena, rather than a desire to provide a local transmission service to Hatfield. Therefore, Pearson urges denial of the proposal.

3. Petitioner refutes Pearson's objections. In the first instance, petitioner advises that as Hatfield is an incorporated town and is recognized by the U.S. Census Bureau, its existence as a bona fide community is met. Therefore, petitioner remarks that further demographic data to support the allotment of Channel 281C2 to Hatfield is not required. As to Pearson's assertion that the instant proposal represents an attempt to allot an additional FM channel to Mena, Arkansas, petitioner states that no evidence has been presented to support such a presumption. And, in any event, petitioner notes that the Commission has held that it is inappropriate to question the intent of the petitioner in an allotment proceeding, citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 102 (1982). Petitioner avers that as Hatfield is a cognizable community, the requested allotment of Channel 281C2 will serve the public interest by providing area residents with a diversity of programming choices. Accordingly, petitioner concludes that the provision of local programming to the residents of Hatfield outweighs the surmised harm Pearson alleges the provision of an additional competitive service in the market could have on the financial stability of existing stations in the area. Therefore, petitioner urges grant of the proposal.

4. Initially, we address Hatfield's status as a recognizable community for allotment purposes. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allocate channels "... among the several States and communities." Communities, for allotment purposes, have been defined as geographically identifiable population groupings. If a community is listed in the U.S. Census or is incorporated, that is sufficient to satisfy the requirements of Section 307(b). See, *Revision of FM Assignment Policies and Procedures* ("Revision"), 90 FCC 2d 88, 101 (1982). Unlike the facts presented in *Gretna, Florida, et al.*, and *Ellison Bay, Wisconsin, supra*, Hatfield is included in the Census and is incorporated. Therefore, having met our basic criteria to establish community standing, there was no reason to question Hatfield's status in the *Notice*, nor require the petitioner to present the Commission with additional information in that regard.

5. Secondly, as petitioner correctly noted, we do not believe that the motivation of a party is relevant in an allotment rule making proceeding. See *Revision, supra*, at 102. Although the ultimate licensee of an allotment at Hatfield may provide service to Mena, its primary obligation is to serve the needs and interests of the community to which it is licensed.⁶

⁵According to the Commission's records, fulltime Station KENA(AM), as well as Stations KTTG(FM), Channel 242C1 and KENA-FM, Channel 271C3 are licensed at Mena.

⁶See Section 73.1120 of the Commission's Rules.

Additionally, while Pearson contends that Hatfield is already well served by area stations, such reception service is not an adequate substitute for localism. See *Clinton, Louisiana*, 45 R.R. 2d 1587 (1979) and *Westover and Grafton, West Virginia*, 46 FR 10737 (1981).

6. Based upon the information presented, we believe the public interest would be served by allotting Channel 281C2 to Hatfield, Arkansas, as that community's first local aural transmission service. Channel 281C2 can be allotted to Hatfield in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located at least 5.0 kilometers (3.1 miles) northeast of the community at coordinates 34-31-41 and 94-21-32.⁷

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 30, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include Hatfield, Arkansas, as follows:

<u>City</u>	<u>Channel No.</u>
Hatfield, Arkansas	281C2

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. The window period for filing applications for Channel 281C2 at Hatfield, Arkansas, will open on September 30, 1996, and close on October 31, 1996.

⁷These coordinates represent a slightly further site restriction from that proposed in the *Notice* at a site 3.9 kilometers (2.4 miles) northwest of the community at coordinates 34-31-04 and 94-23-46. The additional minimum distance separation is required to avoid a conflict with the modification of Station KBUS(FM), Paris, Texas in the context of MM Docket No. 95-126 to operate on Channel 282C2 at coordinates 33-45-04 and 95-24-51. See *Denison-Sherman, Paris, Jacksboro, Texas, and Madill, Oklahoma*, 11 FCC Rcd 5316 (1996), recons. pending.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 281C2 at Hatfield, Arkansas, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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